

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2009 JAN -9 AM 11: 58

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11 ARIZONA SUPERIOR COURT
12 YAVAPAI COUNTY

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 STEVEN CARROLL DEMOCKER,

17 Defendant.

No. CR 2008-1339

Division 6

**MEMORANDUM OF
AMERICAN BROADCASTING
COMPANIES, INC. IN SUPPORT
OF REQUEST FOR CAMERA
COVERAGE**

(Assigned to the Hon. Thomas B.
Lindberg)

18 Pursuant to Ariz. R. Sup. Ct. 122, Ariz. R. Crim. P. 9.3(b), Ariz. Const.
19 art. II, § 11 and U.S. Const. amend I, American Broadcasting Companies, Inc. ("ABC")
20 respectfully submits this memorandum in support of its request to allow camera
21 coverage of the January 13, 2009 bail hearing, subsequent proceedings and trial in this
22 matter (collectively, the "Hearings").

23 MEMORANDUM

24 Preliminary Statement

25 The United States and Arizona Supreme Courts long ago rejected the
26 argument raised by Defendant that the Sixth Amendment trumps the public's right to
27 camera coverage of a criminal proceeding. *E.g., Chandler v. Florida*, 449 U.S. 560
28 (1981) (permitting states to allow television and still photographic coverage of criminal

1 trials); Ariz. R. Sup. Ct. 122. In recent years, the Arizona Supreme Court has
2 emphasized the importance of camera coverage in capital murder cases. *See* Ariz. Sup.
3 Ct. Admin. Order No. 2006-9 (waiving one-camera limit in Tucson murder-for-hire trial
4 of Dr. Bradley Schwartz); *cf.* Ariz. R. Sup. Ct. 122 (2009 revisions requiring trial courts
5 to make written findings before limiting camera coverage and allowing appellate
6 review). This case – which involves a well-known, licensed stockbroker who stands
7 accused of the brutal slaying of his ex-wife, a successful local artist and former faculty
8 member at Prescott College – is a matter of acute public interest. Consequently, there
9 are far more people interested in observing these proceedings than there are seats in the
10 courtroom.

11 When Defendant’s objections are examined closely, they simply reveal a
12 desire to manage his image to the maximum extent possible. While ABC does not
13 oppose coverage guidelines that would allow the Defendant to appear in court in street
14 clothes, “well-groomed,” such concerns do not justify closure of the proceedings to
15 cameras. Rule 122 allows camera coverage unless the court makes “specific, on-the-
16 record findings that there is a likelihood of harm . . . that outweighs the benefit to the
17 public of camera coverage.” Ariz. R. Sup. Ct. 122(c). Instead of meeting this burden,
18 Defendant has offered only speculation that his Sixth Amendment rights *might* be
19 impacted by future coverage, or that coverage by *other* media may have adversely
20 impacted *other* cases.

21 Presumably, trial is months away, and courts have long recognized *voir*
22 *dire* as an effective tool to screen jurors who may have been influenced by pre-trial
23 publicity. *Press-Enterprise v. Superior Court*, 478 U.S. 1, 15 (1986) (“*Press-Enterprise*
24 *II*”). By contrast, the public interest in monitoring a capital murder case is real and
25 directly advanced by camera coverage. *E.g.*, *Petition of WMUR Channel 9*, 813 A.2d
26 455, 460 (N.H. 2002) (citing studies that have found that allowing cameras in the
27 courtroom “improves public perceptions of the judiciary and its processes, improves the
28 trial process for all participants, and educates the public about the judicial branch of

1 government.”). Accordingly, and for the reasons explained more fully below, ABC
2 respectfully requests that the Court grant its Request for Camera Coverage.

3 Pertinent Background

4 On January 5, 2009, ABC News Producer Andrew Paparella submitted a
5 written request for camera coverage of the January 13, 2008 bail hearing and related
6 proceedings in this matter. [Ex. A] In his letter, Mr. Paparella stated that ABC’s
7 cameras and microphones are “small, quiet, and unobtrusive.” [Id.] He pointed out that
8 ABC could cover the proceedings with no additional lighting, and that ABC will “obey
9 whatever rules and restrictions [the Court feels] are appropriate in the courtroom and in
10 the courthouse.” [Id.] ABC News is producing a report on this case for its “20/20” news
11 program. ABC is a major news organization, whose “20/20” program has over 30 years
12 experience covering courtroom proceedings responsibly, as it will do here.

13 Argument

14 I. FOR MANY COMPELLING REASONS, THE COURT SHOULD PERMIT 15 CAMERA COVERAGE OF THE HEARINGS UNDER RULE 122.

16 A. ABC Has a Presumptive Right of Access to Cover Criminal Proceedings.

17 Pursuant to the First Amendment and Arizona law, the public and media
18 have a presumptive right to attend criminal hearings. *See, e.g., Richmond Newspapers,*
19 *Inc. v. Virginia*, 448 U.S. 555, 580 (1980) (First Amendment right of access applies to
20 criminal proceedings); Ariz. Const. art. II, § 11 (“Justice in all cases shall be
21 administered openly”); Ariz. R. Crim. P. 9.3(b) (“All proceedings shall be
22 [presumptively] open to the public, including representatives of the news media”).
23 In addition to its right to attend the Hearings, ABC has a vital interest in furthering its
24 First Amendment right to gather and report the news by *taping* the proceedings. *See,*
25 *e.g., CBS Inc. v. Young*, 522 F.2d 234, 238 (6th Cir. 1975) (newsgathering is activity
26 protected by the First Amendment; “The protected right to publish the news would be of
27 little value in the absence of sources from which to obtain it.”); Ariz. R. Sup. Ct.
28 123(c)(1) (“Historically, this state has always favored open government and an informed

1 citizenry.”). For a television network bringing news to its viewers, it is essential that
2 ABC be allowed to use the most basic newsgathering tools at its disposal – including
3 cameras – to cover the Hearings. *See WMUR*, 813 A.2d at 460 (holding that media
4 access to judicial proceedings includes technological advances applicable to the media
5 profession; “[T]he use of cameras by the electronic media is merely an extension of the
6 reporting function of the more traditional arms of the press.”).

7 Allowing cameras in the courtroom encourages openness and allows the
8 public to monitor criminal proceedings – an issue of utmost public concern. *See Press-*
9 *Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984) (“*Press-Enterprise I*”)
10 (Openness in criminal proceedings “enhances both the basic fairness of the criminal
11 [proceeding] and the appearance of fairness so essential to public confidence in the
12 system.”); *Ariz. Sup. Ct. Admin. Order 95-35* at 1. Video coverage of court proceedings
13 is the most direct and accurate tool available to convey unfiltered information about the
14 judicial system to the public. In contrast, prohibiting cameras in the courtroom impedes
15 public access to criminal proceedings. *See In re WLBT, Inc.*, 905 So. 2d 1196, 1199
16 (Miss. 2005) (“[P]rohibiting cameras does restrict the ability of the public to access the
17 proceedings . . . and should be resorted to only after less restrictive measures have been
18 considered and found to be inadequate.”). Accordingly, ABC should be permitted to
19 tape the Hearings in their entirety, consistent with the requirements of *Ariz. R. Sup. Ct.*
20 122.

21 B. Camera Coverage Should Be Permitted Under Rule 122.

22 In September 2008, the Arizona Supreme Court approved the first
23 significant revisions to Rule 122 since its inception over 20 years ago. Under the new
24 rule, courts may limit or prohibit camera coverage of courtroom proceedings “only after
25 making specific, on-the-record findings that there is a *likelihood of harm* arising from
26 one or more” of seven factors identified in the Rule “*that outweighs the benefit to the*
27 *public* of camera coverage.” *Ariz. R. Sup. Ct. 122(c)* (emphasis added). The Rule
28 provides that the trial court should give due consideration to the following factors:

- 1 (i) The impact of coverage upon the right of any party to a fair trial;
2 (ii) The impact of coverage upon the right of privacy of any party or
3 witness;
4 (iii) The impact of coverage upon the safety and well-being of any party,
5 witness or juror;
6 (iv) The likelihood that coverage would distract participants or would
7 detract from the dignity of the proceedings;
8 (v) The adequacy of the physical facilities of the court for coverage;
9 (vi) The timeliness of the request pursuant to subsection (f) of this Rule;
10 and
11 (vii) Any other factor affecting the fair administration of justice.

12 Ariz. Sup. Ct. R. 122(b). None of these factors favors closure of the Hearings to a
13 camera in light of the clear benefit to the public of ABC's coverage of the proceedings.

14 C. Camera Coverage Poses No Risk to Defendant's Fair-Trial Rights.

15 Defendant has failed to demonstrate a *likelihood* of harm to his Sixth
16 Amendment rights posed by camera coverage. Rather, Defendant points to "damage
17 already done by the print media" – not any camera coverage of the case – as a basis for
18 denying ABC's request. [Defendant's Objection, at 3] Defendant's Objection offers
19 nothing but rank speculation that camera coverage by a national network would
20 somehow "further taint" the jury pool. Similarly, he promises to present examples of
21 harm in other "high-profile" cases caused by camera coverage. Yet it is prejudicial in
22 the extreme to suggest that camera coverage of previous, unrelated trials by *other* news
23 outlets somehow establishes that ABC's coverage would be harmful in this case. Even
24 if Defendant could prove a "likelihood of harm," the defense team has not begun to
25 show that images of their client would "outweigh[] the benefit to the public of camera
26 coverage." Ariz. R. Sup. Ct. 122(c). [Defendant's Objection, at 4]

27 Defendant's speculation about the impact of camera coverage on the jury
28 pool is both off-base and premature. ABC understands that trial may be months away,

1 yet Defendant has made no evidentiary showing to support his assertion that camera
2 coverage poses a substantial threat of tainting the large Yavapai County jury pool. [See
3 <http://www.azcommerce.com/doclib/COMMUNE/Yavapai%20County.pdf> (recognizing
4 2007 population of Yavapai County as 223,934)] As the United States Supreme Court
5 noted in a case involving public access to criminal proceedings, *voir dire* is more than
6 sufficient to prevent any conceivable prejudice:

7 [T]his risk of prejudice [to the jury selection process] does not
8 automatically justify refusing public access. . . . Through *voir*
9 *dire*, cumbersome as it is in some circumstances, a court can
10 identify those jurors whose prior knowledge of a case would
11 disable them from rendering an impartial verdict.

12 *Press-Enterprise II*, 478 U.S. at 15.

13 Over 25 years ago, the U.S. Supreme Court rejected an absolute ban on
14 broadcast coverage of trials based on mere speculation that reports of pre-trial and trial
15 events “may impair the ability of jurors to decide . . . uninfluenced by extraneous
16 matter.” *Chandler*, 449 U.S. at 574-75 (permitting states to allow television and still
17 photographic coverage of trials); *see also Patton v. Yount*, 467 U.S. 1025, 1032 (1984)
18 (jurors not prejudiced by adverse publicity that significantly predated trial). Similarly,
19 courts have repeatedly rejected Defendant’s argument that the mere presence of a
20 television camera in the courtroom harms fair-trial rights. *Chandler*, 449 U.S. at 578-79
21 (“[A]t present no one has been able to present empirical data sufficient to establish that
22 the mere presence of the broadcast media inherently has an adverse effect on [the
23 judicial process].”); *Stephens v. Mississippi*, 911 So. 2d 424, 433 (Miss. 2005) (holding
24 placement of national network’s television camera in courtroom did not impact
25 defendant’s fair-trial rights). Accordingly, unless Defendant can specifically
26 demonstrate how camera coverage would impact his right to a fair trial, the Court should
27 permit an ABC camera to cover the Hearings. *WMUR*, 813 A.2d at 460 (holding that
28 camera coverage does not negatively impact defendant’s fair-trial rights).

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1 II. THE PUBLIC WOULD BENEFIT FROM CAMERA COVERAGE OF THE
2 HEARINGS.

3 The Arizona Supreme Court recently recognized the unique role cameras
4 play in informing the public about the justice system in a remarkably similar case. In
5 waiving the one-camera limit at a Tucson murder trial in which a well-known doctor
6 was accused of conspiring to murder his former associate, the Court observed: "It is in
7 the public interest that people understand as fully as possible the operation of the justice
8 system, and the courts in particular." Ariz. Sup. Ct. Admin. Order No. 2006-9
9 (approving camera coverage by national network). [Ex. B] Video coverage of court
10 proceedings is the most direct and accurate tool available to convey unfiltered
11 information about the courts and their proceedings to the public. Allowing camera
12 coverage would enhance the public's ability to monitor this case and obtain information
13 about the legal system. See *WMUR*, 813 A.2d at 460.

14 Importantly, the parties in this case are well-known public figures: the
15 victim, a successful artist and professor at Prescott College; the Defendant, a Senior
16 Vice President with a prominent investment firm who until recently maintained a web
17 page promoting his business. [See Ex. C] Here, the public interest is heightened
18 because the Defendant is accused of capital murder. As a matter of law, the public has
19 an acute interest in monitoring such judicial proceedings. *E.g.*, Ariz. Sup. Ct. Admin.
20 Order 95-35 at 1 ("This Court has long been cognizant of the value of an informed
21 public as a restraint upon government, and upon the value of the press as a vital source
22 of public information."); *Phoenix Newspapers, Inc. v. Superior Court*, 101 Ariz. 257,
23 259, 418 P.2d 594, 596 (1966) ("[C]ourts are public institutions. The manner in which
24 justice is administered does not have any private aspects.").

25 At bottom, allowing camera coverage of the Hearings is consistent with
26 Arizona's long commitment to open court proceedings and the well-established
27 principle that "[p]ublic scrutiny of a criminal trial enhances the quality and safeguards
28 the integrity of the factfinding process, with benefits to both the defendant and society

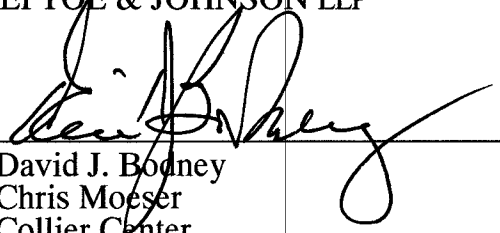
1 as a whole.” *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982).
2 Accordingly, ABC should be permitted to videotape the Hearings, consistent with the
3 requirements of Ariz. R. Sup. Ct. 122.

4 Conclusion

5 For the foregoing reasons, ABC’s Request for Camera Coverage should be
6 granted.

7 RESPECTFULLY SUBMITTED this 2nd day of January, 2009.

8 STEPTOE & JOHNSON LLP

9
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1 ORIGINAL of the foregoing to be filed
2 January 9, 2009, with:

3 Jeanne Hicks
4 Clerk of the Court
5 Yavapai County Superior Court
6 Prescott, AZ

7 COPY of the foregoing faxed or emailed on
8 January 8, 2009, and to be hand-delivered
9 on January 9, 2009, to:

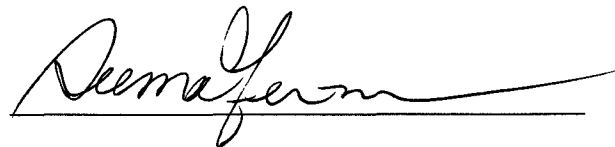
10 The Hon. Thomas B. Lindberg
11 Judge of the Superior Court
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572406

January 5th, 2009

Judge Thomas Lindberg
Yavapai Co Superior Court, Division VI
Yavapai County Courthouse
120 South Cortez Street
Prescott, AZ 86303
Via Fax: 928-771-3497

Dear Judge Lindberg:

The ABC News program "20/20" is producing a report on the Steven DeMocker case. I am writing to request permission to videotape the remainder of Mr. DeMocker's bail hearing next week, beginning Tuesday, January 13th as well as any subsequent hearings and his trial.

We feel that the DeMocker case touches on social and legal issues of significant news value. We are committed to producing a thorough and fair report. I want to emphasize that we are also committed to reporting on the case with respect, restraint, and good taste

We believe our coverage of the proceedings will not impact the right of any party to a fair trial; the right of privacy of any party or witness; or the safety and well-being of any party, witness or juror. Nor will our coverage distract participants or detract from the dignity of the proceedings. Our cameras and microphones are small, quiet, and unobtrusive. We may be able to record with no additional lighting. If you approve this request, we will obey whatever rules and restrictions you feel are appropriate in the courtroom and in the courthouse

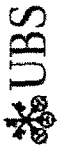
We ask that the court consider that the Supreme Court of Arizona has revised Rule 122 on cameras in courtrooms, requiring "specific, on-the-record findings that there is a likelihood of harm . . . that outweighs the benefit to the public of camera coverage" before banning photographs of court proceedings.

Please do not hesitate to contact me should you require any further information. I can be reached at my office at 212 456 5968 between the hours of 11a.m. and 7p.m. EST; or via email at Andrew.Paparella@abc.com. Thank you for your consideration of this request.

Sincerely,

Andrew Paparella
Producer, ABC News, 20/20

RUTH V. MCGREGOR
Chief Justice



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I contact my clients regularly to stay informed of their ever-changing needs. By developing disciplined investment plans based on each client's goals, I offer wealth management strategies for today and years to come.



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